

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In re Applications of:

DAVID A. RINGER

et al.

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: The Review Board

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MOTION FOR LEAVE TO FILE STATEMENT

Respectfully submitted,

OHIO RADIO ASSOCIATES, INC.

By: _____

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February 21, 1995

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MOTION FOR LEAVE TO FILE STATEMENT

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.41 of the Commission's Rules, hereby submits this motion for leave to file a statement for the record. ORA requests leave to file this statement with respect to an opposition to an amendment of Shellee F. Davis ("Davis") it filed on August 24, 1994. In support of its motion for leave to file, ORA submits the following.

Counsel for Davis has telephoned counsel for ORA and stated his vehement disagreement with certain assertions made by ORA in its August 24, 1994, opposition. Counsel for Davis has demanded that a retraction be made.

In the August 24, 1994, opposition, at p. 4, ORA contended that Davis had "refused" to provide the Review Board with the date that her proposed tower site had been sold. Counsel for Davis stated in the telephone conversation that Davis did not "refuse" to provide the information, but rather could not provide it.

However, ORA stands by its characterization that Davis "refused" to provide the date that her proposed tower site was sold. In an April 6, 1994, opposition to an amendment of Davis reporting the sale of her proposed tower site, ORA requested that Davis provide the date of the sale before the amendment is accepted. Davis never provided this information even though it was within her power and ability if she desired to do so.

Davis could have obtained the information from the property owner who she presumably had a relationship with because of the prior tower site agreement which had been voided by the sale. In any event, the date of the sale of the tower site was a matter of public record and thus could have been obtained by Davis.

Accordingly, it is a fair characterization of the facts to contend that Davis "refused" to provide the requested information. See, Webster's II Dictionary, defining "refusal" as declining to do something. If Davis disagrees with this characterization and with this definition, she is free to file an opposition stating her contentions.

Counsel for Davis also vehemently disagrees with another assertion in the August 24, 1994, opposition of ORA. Therein, at p. 8, ORA noted that Davis proposes the use of a 6 kw, transmitter at her new tower site. It therefore contended that this is incompatible with a condition imposed by the tower site owner which restricts Davis to a 5 kw. transmitter.

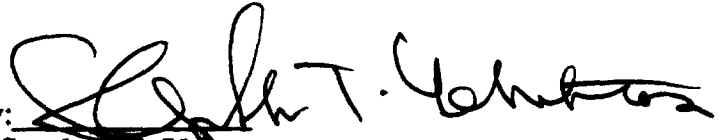
Counsel for Davis stated in a telephone conversation that Davis did not propose in her August 15, 1994, amendment the use of a 6 kw. transmitter and thus demands a retraction. However, the amendment of Davis, FCC Form 301, p. 19, and the Engineering Exhibit EE-1, p. 1, state that Davis proposes an effective 6 kw. power in both the horizontal and vertical planes at 100 meters H.A.A.T. Accordingly, it is a fair characterization of Davis' amendment to state that she proposes to use a 6 kw. transmitter.

If Davis can utilize a 5 kw. transmitter and still obtain an effective 6 kw. in both the horizontal and vertical planes at 100 meters H.A.A.T. and operate consistent with other engineering representations in her amendment, she is free to file an opposition in order to explain how this can be done. In so doing, Davis should also clarify her July 13, 1994, tower lease letter and state whether the tower owner is restricting her to use of a transmitter with no more than a rated 5 kw. output, or whether the effective output power is limited to 5 kw.

WHEREFORE, in view of the foregoing, ORA requests that the Review Board grant its motion for leave to file this statement for the record, which is being filed at the insistence of counsel for Davis.

Respectfully submitted,

OHIO RADIO ASSOCIATES, INC.

By: 
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February 21, 1995

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney, do hereby certify that on this 21st day of February, 1995, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion for Leave to File Statement" to the following:

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Federal Communications Commission
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Hearing Branch
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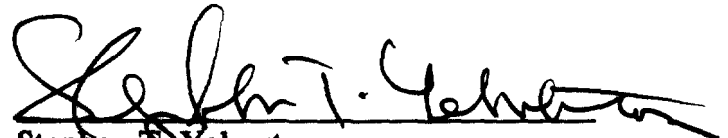
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